



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2015

Ms. Sarah R. Martin
Assistant City Attorney
Legal Division
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2015-22610

Dear Ms. Martin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 585964 (PD Reference Nos. 22871, 22875, 22876, 22881, 22886, 22888, 22931, 22951, 22953, 22965, 22970, 22977, 23238, 23396, and 23484).

The Arlington Police Department (the "department") received fifteen requests from different requestors for several categories of information pertaining to a specified incident and information pertaining to two named officers. You state you have released some information. You also state you will redact information under sections 552.117 and 552.1175 of the Government Code and in accordance with Open Records Decision No. 670 (2001).¹ You claim the submitted information is excepted from disclosure under

¹Section 552.024 of the Government Code permits a governmental body to redact information subject to section 552.117 of the Government Code in certain situations without requesting a decision from this office. *See* Gov't Code § 552.024(c). Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See id.* § 552.1175(b), (f). Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6.

sections 552.101, 552.103, 552.108, 552.122, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code* § 552.301(e). Although you timely submitted most of your arguments for the information responsive to the first thirteen requests, you did not submit written comments stating why section 552.103 of the Government Code applies to this information until October 1, 2015. We note, the latest possible fifteen-business-day deadline for the first thirteen requests was September 17, 2015. Therefore, we find the department has failed to comply with the requirements of section 552.301(e) of the Government Code when claiming section 552.103 for this information. Furthermore, you also did not submit some of the information responsive to two of the first thirteen requests for our review until October 1, 2015. Therefore, because the latest possible fifteen-business-day deadline for the first thirteen requests was September 17, 2015, we find the department also failed to comply with the requirements of section 552.301(e) when submitting this information for our review.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.— Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.— Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.103 is a discretionary exception that protects a governmental body's interests and may be waived by a governmental body's failure to comply with the procedural requirements of the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App. – Dallas 1999, no pet.)

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 may be waived), 522 at 4 (1989) (discretionary exceptions in general). Thus, the department has waived its section 552.103 claim for the information responsive to the first thirteen requests. Accordingly, in waiving section 552.103 for the information responsive to the first thirteen requests, the department has also waived its claim under section 552.103 with respect to the same information responsive to the fourteenth and fifteenth requests for information. Therefore, the department may not withhold any of this information under section 552.103. However, we will address the department's argument under section 552.103 for the remaining information timely submitted on October 1, 2015. Additionally, we note some of the information that was untimely submitting for our review contains information subject to section 552.101 and 552.130 of the Government Code. As these exceptions can provide a compelling reason to withhold information, we will address their applicability to the untimely submitted information.³

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). Exhibits J1 and Q pertain to completed investigations. The department must release the completed investigations pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). Exhibit M contains court-filed documents that are subject to section 552.022(a)(17) and must be released unless they are made confidential under the Act or other law. *See id.* § 552.022(a)(17). Although the department raises section 552.103 of the Government Code for Exhibits J1 and Q, this exception is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning*

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

News, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the department may not withhold Exhibits J1 and Q under section 552.103. Furthermore, although the department seeks to withhold Exhibit M under section 552.101 of the Government Code in conjunction with common-law privacy, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As a result, you may not withhold the information that is subject to section 552.022(a)(17) under section 552.101 of the Government Code in conjunction with common-law privacy. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address the department’s assertion of section 552.108 for Exhibit Q. Furthermore, because section 552.101 of the Government Code can make information confidential under the Act, we will address the applicability of this section to the information subject to section 552.022(a)(1). Additionally, because sections 552.102, 552.117, 552.130, 552.136, and 552.152 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions for the information subject to section 552.022(a)(17).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the information at issue in Exhibit H and the information we have marked in Exhibit F were used or developed in an investigation of alleged or suspected child abuse or neglect. Accordingly, we find this information falls within the scope of section 261.201 of the Family Code. *See id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not

been married or who has not had the disabilities of minority removed for general purposes), *see also* Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 4, 2015 Tex. Sess. Law Serv. 4310, 4312 (Vernon) (to be codified as an amendment to Fam. Code § 261.001(1)) (defining “abuse” for purposes of Family Code chapter 261); Act of May 21, 2015, 84th Leg., R.S., ch. 432, § 1, 2015 Tex. Sess. Law Serv. 1686, 1686-87 (Vernon) (to be codified as an amendment to Fam. Code § 261.001(4)) (defining “neglect” for purposes of Family Code chapter 261). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption, we conclude the department must withhold Exhibit H and the information we have marked in Exhibit F under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.⁴

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. Act of June 1, 2015, 84th Leg., R.S., ch. 935, § 18, 2015 Tex. Sess. Law Serv. 3224, 3233-34 (Vernon) (to be codified as amendments to Fam. Code § 51.03); Act of May 31, 2015, 84th Leg., R.S., ch. 944, § 4, 2015 Tex. Sess. Law Serv. 3268, 3269-70 (Vernon) (to be codified as an amendment to Fam. Code § 51.03(b)); Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 3, 2015 Tex. Sess. Law Serv. 4310, 4311 (Vernon) (to be codified as an amendment to Fam. Code § 51.03(b)) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). For

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See* Fam. Code § 51.02(2). Upon review, we find the information at issue in Exhibit I and the information we have marked involve delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Further, it does not appear that any of the exceptions in section 58.007 apply to this information. Accordingly, the department must withhold Exhibit I and the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, we find you have failed to demonstrate the remaining information at issue depicts an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you state the information at issue in Exhibits E, E1, F1, G, N, P, and the remaining information in Exhibit F, relate to an ongoing criminal investigation. Based upon your representation and our review, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred

adjudication. *See id.* § 552.301(e)(1)(A). As noted above, section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d at 320; *Morales*, 840 S.W.2d at 519. You state the information at issue in Exhibit Q pertains to concluded investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude section 552.108(a)(2) is applicable to some of the information, which we have marked. The remaining information, however, reflects it was generated as part of internal investigations conducted by the department that were purely administrative in nature. Therefore, we find the department has failed to demonstrate the applicability of section 552.108(a)(2) to the remaining information. Accordingly, the department may not withhold any of the remaining information under section 552.108(a)(2) of the Government Code.

However, we note, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the department may withhold Exhibits E, E1, F1, G, N, P, and the remaining information in Exhibit F under section 552.108(a)(1) of the Government Code and the information we have marked under section 552.108(a)(2) of the Government Code.⁵

Section 552.103 of the Government Code provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, an attorney for a potential opposing party making a demand for payment and asserting an intent to sue if such payments are not made. Open Records Decision Nos. 555 at 3 (1990), 346 (1982). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party threatened to sue on several occasions and hired an attorney. *See* Open Records Decision No. 288 at 2 (1981). However, an individual publicly threatening to bring suit against a governmental body, but who does not actually take objective steps toward filing suit, is not concrete evidence that litigation is reasonably anticipated. *See* Open Records Decision No. 331 at 1-2 (1982).

The department states, prior to its receipt of the instant request, it reasonably anticipated litigation when it received a notice of representation and notice to preserve evidence sent by the attorney for the estate of the victim at issue in the specified incident. Thus, we find the department reasonably anticipated litigation when it received the request for information. We also find the department has established Exhibit S relates to the anticipated litigation for purposes of section 552.103(a). Therefore, we find the department may withhold Exhibit S under section 552.103(a) of the Government Code.⁶

However, once the information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

⁶As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides the following:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Exhibit O contains polygraph information that is confidential under section 1703.306. However, one of the requestors is the examinee's authorized representative. Thus, the department has the discretion to release the polygraph information at issue in Exhibit O to the examinee's representative pursuant to section 1703.306(a)(1). *See* ORD 481 at 9. Otherwise, the department must withhold Exhibit O under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal

charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Act of May 27, 2015, 84th Leg., R.S., ch 1279 § 21, 2015 Tex. Sess. Law Serv. 4327, 4337 - 4338 (Vernon) (to be codified as an amendment to Gov’t Code § 411.083(a)). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. Gov’t Code § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Id.* § 411.082(2)(B) (criminal history record information does not include driving record information). We also note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement in the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find the information we have marked constitutes confidential CHRI which the department must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, none of the remaining information constitutes confidential CHRI; thus, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the department must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial*

Foundation. Id. at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Additionally, under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.⁷ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Furthermore, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis. We note records relating to routine traffic violations are not considered criminal history information. Cf. Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). We also note active warrant information or other information relating to one's current involvement in the criminal justice system does not constitute criminal history information for purposes of section 552.101. See *id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). This office has noted the public has a legitimate interest in information relating to those who are involved in law enforcement. See, e.g., Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of law enforcement employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private).

⁷Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold public citizens' dates of birth and the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold the remaining information under section 552.101 of the Government Code on this basis.

As noted above, you state you will redact some information subject to section 552.117(a)(2) of the Government Code in accordance with Open Records Decision No. 670. We note the remaining responsive information contains additional information subject to section 552.117(a)(2). Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.⁸ Gov't Code § 552.117(a)(2). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). However, we note section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. Upon review, we find the department must withhold the additional information we have marked and indicated under section 552.117(a)(2) of the Government Code; however, the department may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body.

As noted above, you state you will redact some information subject to section 552.1175 of the Government Code. Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. We have marked information pertaining to a peace officer that is not held in an employment capacity by the department. To the extent the peace officer elects to restrict access to the information we have marked and indicated in accordance with section 552.1175(b), the department must withhold this information under section 552.1175 of the Government Code. To the extent the peace officer whose information is at issue did not elect to restrict access to this information in accordance with

⁸Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

section 552.1175(b), the department may not withhold it under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Therefore, the department must withhold the access device numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses at issue do not appear to be of a type specifically excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to their public disclosure.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. Upon review, we find you have failed to demonstrate the release of the remaining information at issue would subject an employee or officer of the department to a substantial risk of physical harm. Accordingly, the department may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the department must withhold Exhibit H and the information we have marked in Exhibit F under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold Exhibit I and the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, the department may withhold Exhibits E, E1, F1, G, N, P, and the remaining information in Exhibit F under section 552.108(a)(1) of the Government Code. With the exception of basic information, the department may withhold the information we have marked under section 552.108(a)(2) of the Government Code. The department may withhold Exhibit S under section 552.103 of the Government Code. The department must withhold Exhibit O under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code; however, the department has the discretion to release the polygraph information to the examinee's representative pursuant to section 1703.306(a)(1) of the Occupations Code. The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the date of birth we have marked under section 552.102(a) of the Government Code. The department must withhold public citizens' dates of birth and the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the additional information we have marked and indicated under section 552.117(a)(2) of the Government Code; however, the department may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. The department must withhold the information we have marked under section 552.1175 of the Government Code, to the extent the peace officer at issue elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The department must withhold the information we have marked and indicated under section 552.130 of the Government Code. The department must withhold the information we have marked under section 552.136 of the Government Code. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to their disclosure. The department must release the remaining information.⁹

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

⁹We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', written over a horizontal line.

Thana Hussaini
Assistant Attorney General
Open Records Division

TSH/som

Ref: ID#585964

Enc. Submitted documents

c: 15 Requestors
(w/o enclosures)